

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

GREATER BOSTON LEGAL SERVICES, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY, *et al.*

Defendants.

**JOINT STATEMENT AND
(PROPOSED) SCHEDULING
ORDER**

Case No.: 1:21-cv-10083-DJC

JOINT STATEMENT AND (PROPOSED) SCHEDULING ORDER

The Parties to the above-captioned action met and conferred on May 4, 2022 and hereby submit this joint statement and proposed scheduling order, pursuant to L.R. 16.1(d) and the Court's Notice of Scheduling Conference (ECF No. 51).

I. Concise Summary of the Parties' Positions.

Plaintiffs—lawyers, law firms, and a nonprofit legal services organization—brought this Administrative Procedure Act (“APA”) challenge against the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and each of their respective agency heads in their official capacity. On January 14, 2022, this Court granted in part and denied in part Defendants' motion to dismiss. ECF No. 50. As authorized by the Court, Plaintiffs filed an amended complaint on February 14, 2022, ECF No. 57. Defendants then filed a partial motion to dismiss (ECF No. 62), requesting that the Court dismiss those portions of Plaintiffs' claim that it had not already allowed. The Court scheduled a motion hearing, along with a scheduling conference, for May 23, 2022.

A. Plaintiffs' Position.

In their Amended Complaint (ECF No. 57), Plaintiffs have adequately alleged a reviewable agency action, *i.e.*, the Defendants’ policy confining disclosure in immigration proceedings to the FOIA process. The unlawful character of the Policy flows from Defendants’ decision to “default to FOIA” knowing that the FOIA process will frequently fail to produce documents in a timely manner, if at all, to enable Plaintiffs to represent their non-citizen clients. The Defendants’ policy lacks any nexus to “the purposes of the immigration laws or the appropriate operation of the immigration system.” *See Judulang v. Holder*, 565 U.S. 42, 55 (2011). It is arbitrary and capricious in violation of the APA and otherwise incompatible with law. Plaintiffs seek declaratory and injunctive relief against the continued implementation of the Defendants’ policy and an order compelling Defendants to provide disclosures, including those required by law, in compliance with the APA.

B. Defendants’ Position.

Defendants contend that Plaintiffs’ amended complaint fails to state a claim upon which relief can be granted and should be dismissed for the reasons described in Defendants’ Motion to Dismiss (ECF No. 23) and Partial Motion to Dismiss (ECF No. 62). Additionally, Defendants contend that they have not violated the APA, acted arbitrarily and capriciously, abused their discretion, maintained an unconstitutional policy or practice, or otherwise acted unlawfully.

II. Proposed Schedule.

The parties propose to meet and confer within two weeks of the Court’s decision on the pending motion to dismiss to discuss the impact of that decision on scheduling and, within three weeks of the Court’s decision, propose to submit a status report with a schedule that includes deadlines for (1) the production of the administrative record, (2) summary judgment motions, and

(3) any other briefing, including objections to the administrative record and any opposition to such objections.

III. Local Rule 16.1(d) Certification.

The parties have conferred with their counsel about the potential costs of this litigation and the possible use of alternative dispute resolution. The parties will separately file the certifications required by Local Rule 16.1(d).

May 16, 2022

Respectfully submitted

/s/ Adriana Lafaille

Matthew R. Segal (BBO #654489)
Adriana Lafaille (BBO #680210)
Krista Oehlke (BBO #707566)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MASSACHUSETTS, INC.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
Alafaille@aclum.org

/s/ John T. Montgomery

John T. Montgomery (BBO #352220)
Amanda L. Pine (BBO #707611)
Thanithia Billings (BBO #699018)
ROPES & GRAY LLP
Prudential Center
Boston, MA 02199
(617) 951-7000
John.Montgomery@ropesgray.com

Meghan Gilligan Palermo (*admitted pro hac vice*)

Deanna Minasi (*admitted pro hac vice*)

Lauren Bergelson (*admitted pro hac vice*)

Phillip Kraft (*admitted pro hac vice*)

ROPES & GRAY LLP

1211 Avenue of the Americas

New York, NY 10036

212-596-9000

Meghan.GilliganPalermo@ropesgray.com

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney
General

MARCIA BERMAN
BRIGHAM J. BOWEN
Assistant Branch Directors

/s/ Hilarie Snyder

HILARIE SNYDER
Trial Attorney
U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street NW
Washington, DC 20005
(202) 305-0747
hilarie.e.snyder@usdoj.gov

Dated: _____, 2022

SO ORDERED.

DENISE J. CASPER
United States District Court Judge